

Statement
Insurance Association of Connecticut

Insurance and Real Estate Committee

February 5, 2009

**SB 763, AN ACT CONCERNING THE CONNECTICUT UNFAIR INSURANCE
PRACTICES ACT**

The Insurance Association of Connecticut is adamantly opposed to SB 763, An Act Concerning The Connecticut Unfair Insurance Practices Act, (CUIPA), as it seeks to unnecessarily adulterate the landscape of insurance in Connecticut to the detriment of the consumer. SB 763 seeks to remove the well established general business practice standard of CUIPA and create a private cause of action for any single claim dispute, which will result in the proliferation of lawsuits driving up the cost of insurance.

SB 763 will unnecessarily open the floodgates for lawsuits while driving up the cost of insurance.

Every person who files an lawsuit involving an insurance dispute will likely claim that the insurer has not made a good faith attempt to resolve or settle the matter. As a result it will likely become standard practice to include a CUIPA violation count in every complaint filed involving insurance claims exposing insurers to severe penalties.

Increased litigation will unnecessarily drive up litigation costs. Insurers will have to retain separate counsel for both the underlying cause of action and the CUIPA violation allegation. There will be increased incentives to pursue weak claims as the

expected value of a claim is increased by the possibility of punitive damages. SB 763 will encourage unwarranted settlement demands to coerce insurers to agree to higher settlements in order to avoid the cost of additional litigation. SB 763 in effect provides for unwarranted penalties, which will cause insurance carriers to settle even the most frivolous claim to avoid or minimize allocated and unallocated costs and expenses.

Undoubtedly, an increase in litigation costs will be passed on to the consumer. Increases in CUIPA violation litigation and settlements will drastically and unfairly increase the cost of purchasing insurance for all Connecticut insurance consumers.

SB 763 will incent fraudulent and frivolous claims.

With the threat of severe statutory and pecuniary penalties imposed by SB 763, insurers will be discouraged from aggressively investigating claims, including potentially fraudulent or frivolous claims. An insurer is obligated to defend its insured and only pay proper and legitimate claims to the extent of the insured's liability. As such insurers have developed well-established settlement practices to properly scrutinize and evaluate claims to protect insureds' interests. If SB 763 becomes law, investigative claims practices may be considered a CUIPA violation. By questioning a suspicious claim an insurer runs the risk of exposing itself to the costs associated with a CUIPA violation. Assessing a claimant's contributory negligence may expose an insurer to an allegation of a CUIPA violation. SB 763 will only serve to discourage the use of such legitimate claims practices to avoid the potential that it may be interpreted as a CUIPA violation.

Ironically, many alleged CUIPA violations, such as delay or undervaluation of a claim, are the result of the actions of the claimant. However, SB 763 does nothing to

discourage claimant malfeasance. SB 763 actually rewards such behavior, while only serving to discourage legitimate claims investigations. As such, SB 763 will create incentives to perpetuate claims abuses such as insurance fraud, pursuit of frivolous claims and restriction of claimant co-operation. Claims abuse continues to be a significant problem negatively impacting insurance costs.

SB 763 is contray to the intent of CUIPA and the law in the vast majority of states.

Connecticut's long- standing CUIPA law is patterned after the NAIC Model Act, which requires a finding by the state's insurance regulator that an insurer acted improperly with such frequency to indicate a general business practice. The stated purpose for the NAIC model is to regulate the insurance industry and curtail improper or unfair acts or practices by defining and prohibiting such practices that are deemed to be "unfair methods of competition or unfair or deceptive acts or practices." Included in CUIPA are significant penalties, including significant fines that were raised just last year, that serve as significant deterrents to bad acts. The vast majority of states have adopted the provision of the NAIC model, including the general business practice standard.

The standard that a pattern of misconduct must be proven to sustain a claim has been an essential element of CUIPA since its inception. Absent a "general business practice" standard, any simple claim dispute, i.e. clerical error or delay during claim investigation, could be transformed into claim of a CUIPA violation. SB 763 ignores the intent of the act by permitting parties to prevail in unfair claims practice violation

lawsuits without alleging, and proving, that an insurer's conduct constitutes a "general business practice." The expansion of CUIPA to single acts will result in subjecting insurers to limitless litigation and potential liability for punitive damage and attorneys' fees claim, driving up loss costs resulting in increased premiums.

SB 763 will overburden the regulatory systems and may cause inconsistent results.

SB 763 will likely cause the insurance department to be inundated with CUIPA violation allegations. CUIPA imposes a duty on the insurance commissioner to investigate every claim of improper practices that may impact the public. CUIPA dictates the process for conducting such investigations. The stringent and labor-intensive proceedings may bog down the department while reducing its available resources to conduct other duties of the department.

CUIPA vested the authority to investigate and enforce settlement practices with the insurance commissioner. The commissioner has the administrative authority, plus the specialized skills and knowledge about insurance transactions that cannot be duplicated by the court system. Coupling direct causes of actions with the statutory regulations has potentially onerous consequences in that may result in inconsistent results and penalties. The department is the rightful place for assessing the business practices of insurers and penalties if warranted.

The IAC strongly urges your rejection of SB 763.